

|                               |                        |                     |  |
|-------------------------------|------------------------|---------------------|--|
| <b>Notice of Allowability</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                               | 10/003,861             | RAUSCHMAYER, DENNIS |  |
|                               | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                               | Khai M Nguyen          | 2687                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/10/2004.
2. ☒ The allowed claim(s) is/are 1,3-15 and 17-28.
3. ☒ The drawings filed on 12 March 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Abdul Zindani on Jan. 12, 2005.

In claim 3, line 1, replace "2" by - -1- -.

In claim 4, line 1, replace "2" by - -1- -.

In claim 17, line 1, replace "16" by - -15- -.

In claim 18, line 1, replace "16" by - -15- -.

### ***Reasons for allowance***

2. Claims 1-28 are allowed.

The following is an examiner's statement of reasons for allowance: Prior art teaches a method of performing downstream adaptive modulation in an MMDS, broadband, fixed wireless communication system having a base station with a transmitter-receiver and one or more CPE devices each having a transmitter-receiver, the system utilizing a DOCSIS MAC pursuant to which the DPU is a variable length, Ethernet-type data packet. However, the prior art fails to teaches the operating the base station to transmit data downstream to the CPE devices in a plurality of data modulation

modes, assigning one of the modulation modes to each respective CPE device, monitoring the quality of downstream data transmission to, and reception by, each CPE device, and if the quality of downstream data transmission to and reception by any CPE device receiving data in its assigned modulation mode lies outside a predetermined quality range, assigning a different modulating mode to such CPE device, the different mode rendering the data transmission quality within the predetermined quality range, wherein the monitoring step is effected by monitoring and analyzing upstream messages from the CPE devices.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a) Kuo et al. (U.S. Pat-6542718) disclose Method and apparatus for terminating a burst transmission in a wireless system.

b) Agin (U.S. Pat-6564067) disclose Method for setting a transmission quality target value for power control in a mobile radio communication system.

c) Suzuki (U.S. Pat-6836484) disclose Wireless packet communication method and system for transmitting packet between base station and radio terminal station.

d) Giacalone (U.S. Pat-6542517) disclose System and method for operating a mobile station in voice mode or pager mode.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khai M Nguyen whose telephone number is 703.305.9006. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on 703.306.3016. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**SONNY TRINH**  
**PRIMARY EXAMINER**

Khai Nguyen  
Au: 2687

1/19/2005